93-1070

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

BOB SKIPPER, SHERIFF OF MULTNOMAH COUNTY,

Petitioner,

v.

KIM REUTER,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

STEVEN J. NEMIROW*
Assistant County Counsel
LAURENCE KRESSEL
Multnomah County Counsel
P.O. Box 849
Portland, Oregon 97207
(503) 248-3138

Attorneys for Petitioner

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the broad anti-injunction provisions of the Norris-LaGuardia act permit a district court to preliminarily enjoin discharge of a county corrections officer for violating a workrule, in a suit brought by the officer under 42 U.S.C. § 1983?

LIST OF PARTIES

Petitioner (Defendant-Appellant in the Ninth Circuit):

Bob Skipper, in his official capacity as the elected Sheriff of Multnomah County, Oregon.

Respondent (Plaintiff-Appellee in the Ninth Circuit):

Kim Reuter.

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No. _____

In The

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BOB SKIPPER, SHERIFF OF MULTNOMAH COUNTY,

Petitioner,

v.

KIM REUTER,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the Opinion and Judgment of the United States Court of Appeals for the Ninth Circuit (filed on August 27, 1993; amended October 7, 1993), which affirmed an Order (dated February 8, 1993) of the United States District Court for the District of Oregon.

OPINIONS BELOW

The Opinion of the Ninth Circuit, as amended, is reported at 4 F.3d 716, and is reprinted herein as Appendix A.

The Order of the United States District Court for the District of Oregon has not been reported. It is reprinted herein as Appendix C.

JURISDICTION

The Opinion and Judgment of the Ninth Circuit were filed August 27, 1993, and amended by order on October 7, 1993. The Ninth Circuit entered an order on October 27, 1993, denying Petitioner's Petition Suggesting for Rehearing (*En Banc*) (*see*, Appendix B). This Court has jurisdiction to review the Judgment and Opinion pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of the following statutes are reprinted herein as Appendix D:

1. The Norris-LaGuardia Act, 29 U.S.C. §§ 101-115 (1988).

2. 42 U.S.C. § 1983.

STATEMENT OF THE CASE

Respondent ("Reuter") is employed as a corrections officer with Multnomah County Sheriff's Office. Her terms and conditions of employment are controlled by a collective bargaining agreement between Petitioner (the "County") and the Multnomah County Corrections Officers Association. Under the agreement, certain work rules have been promulgated. One rule prohibits domestic relationships between officers and ex-inmates who have been imprisoned during the preceding ten years. The rule has been the subject of prior union grievances and arbitrations.

Union representatives were present at the internal investigations of Reuter's rule violation. Reuter admitted she violated the rule by cohabitating with a twice-convicted felon, last sentenced (for armed robbery) in 1985, to 20 years confinement.

The County sought to terminate Reuter's employment. The union intended to grieve her termination once it occurred. When Reuter was informed of the County's intention, she filed this action under 42 U.S.C. § 1983. She sought a temporary restraining order and preliminary injunction to block her discharge, claiming that the rule violated her right to associate in an intimate relationship under the First Amendment and her right to privacy under the Fourteenth.

The district court issued a temporary restraining order. After a hearing, the court issued a preliminary injunction preventing the County from firing Reuter pending the outcome of her § 1983 action. The County appealed, arguing, as it had in the district court, that the

Norris-LaGuardia Act (the "Act") divested the district court of jurisdiction to issue a preliminary injunction in a labor dispute. Reuter argued (1) that her impending termination was not a "labor dispute" under the Act and (2) that the Act did not apply because the County was not a "person participating or interested in a labor dispute," covered by the Act, 29 U.S.C. § 113(b).

The Ninth Circuit agreed with the County that Reuter's impending termination was a labor dispute. It also agreed that the County is a "person" under the Act. However, the Ninth Circuit affirmed the injunction. It ruled, as a matter of first impression, that despite the Act's broad anti-injunction language, injunctions issued under § 1983 constitute a class of exceptions to the Act, where it is appropriate for federal courts to issue injunctions in municipal labor disputes (App. A-1-12). This Petition addresses the Opinion's creation of that class of exemptions to the Act.

REASONS FOR GRANTING THE WRIT

Virtually every county and municipal employer which seeks to discharge or discipline an employee will be affected by the issue presented in this case: Whether district courts may issue preliminary injunctions in labor disputes over constitutional rights, despite the broad anti-injunction provisions of the Norris-LaGuardia Act.

1. Labor disputes, including discharges and discipline, that were formerly handled by grievance procedures and binding arbitration under labor agreements, will now be decided in federal courts.

Contrary to Congress' intent, the Ninth Circuit has injected federal district courts squarely into the arena of local government labor relations. Formerly, county and municipal employers – like private sector employers – were not subject to temporary restraining orders and preliminary injunctions in labor disputes. The Norris-LaGuardia Act was thought to have effectively taken the federal courts *out* of the labor injunction business.[1]

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[1] "Th[e] Act's language is broad. The language is broad because Congress was intent on taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act. The history and background that led Congress to take this view have been adverted to in a number of prior opinions of this Court in which we refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts." *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U.S. 365, 369 (1960).

Instead, labor disputes have been customarily handled through the grievance and arbitration provisions bargained in collective labor agreements. Local government workers who claimed to be deprived of constitutional rights in their employment were not deprived of a remedy: they could obtain equitable relief in the form of reinstatement and backpay, and damages and attorney fees in actions under 42 U.S.C. § 1983.

The Ninth Circuit's decision throws the law and custom of labor relations into confusion, and dramatically changes the way county and municipal labor disputes will be resolved. Under the Ninth Circuit's decision, employees facing discharge, discipline or any change in working conditions arguably implicating a constitutional right may apply to the district court for a temporary restraining order and preliminary injunction. On petitions for preliminary injunctions, district courts will now make findings of fact on the *merits* of these labor disputes, supplanting labor arbitrators to whom Congress assigned that job, under federal labor law. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). This Court has expressly cautioned against this practice:

> If an injunction could issue against the [labor dispute] in this case, so in proper circumstances could a court enjoin any other alleged breach of contract pending the exhaustion of the applicable grievance and arbitration provisions even though the injunction would otherwise violate one of the express prohibitions of § 4. The court in such cases would be permitted, if the dispute was arbitrable, to hold hearings, make findings of fact, interpret the applicable provisions of the contract, and issue injunctions so as to restore

> the status quo, or to otherwise regulate the relationship of the parties pending exhaustion of the arbitration process. This would cut deeply into the policy of the Norris-LaGuardia Act and make the courts potential participants in a wide range of arbitrable disputes under the many existing and future collective bargaining contracts, not just for the purpose of enforcing promises to arbitrate, * * * , but for the purpose of preliminarily dealing with the merits of the factual and legal issues that are subjects for the arbitrator and of issuing injunctions that would otherwise be forbidden by the Norris-LaGuardia Act. *Buffalo Forge v. United Steelworkers of America*, 428 U.S. 397, 411-412 (1976).

The conflict between *Buffalo Forge* and the instant case could not be more clear. While *Buffalo Forge* involved a strike, in contrast to the contemplated termination in this case, that difference is insignificant in light of the Ninth Circuit's holding that Reuter's termination, like a strike, is a "labor dispute" under the Act.

2. The Ninth Circuit's determination that § 1983 actions are exempt from the Act undermines arbitration.

In prior opinions, this Court has refused to narrow the Act's coverage, citing Congress' intent to take federal courts out of the labor injunction business. However, the Court does recognize a narrow band of exceptions to the Act, where, despite the Act's express prohibitions, federal courts may issue injunctions to encourage the arbitration

of labor disputes. Contrary to the purpose of the recognized exceptions, the Ninth Circuit's determination in this case *undermines* arbitration.

In three types of labor disputes, this Court has found exceptions to the Act's prohibition against injunctions and has extended federal courts' jurisdiction to issue injunctions. The exceptions allow courts to: (1) compel employers to honor their agreements to arbitrate, *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); (2) enjoin strikes when unions refuse their contractual commitment to arbitrate, *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970); and, (3) compel compliance with specific duties imposed by other federal labor statutes, *Brotherhood of RR Trainmen v. Chicago River & Ind. Ry*, 353 U.S. 30 (1957) (Union's statutory duty to arbitrate "minor disputes" under the Railway Labor Act). The exception for § 1983 actions created by the Ninth Circuit in this case is new.[2] Moreover, it runs counter to the other exceptions which are designed to encourage labor dispute resolution through arbitration.

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[2] The Ninth Circuit's decision (App. A-10-A-11) inadvertently omits a word in a quotation from *Camping Construction Co. v. District Council of Ironworkers*, 915 F.2d 1333 (9th Cir. 1990), and this omission distorts the breadth of the recognized exceptions. Observing that exceptions to the literal strictures of Norris-LaGuardia are few, it quotes the following passage, but *omits* the term "specifically": "Every such case we have discovered accommodates the Act to a duty specifically imposed by another statute, or to the strong federal policy favoring labor arbitration." 915 F.2d at 1345. Omitting "specifically," the Ninth Circuit mistakenly relies on *Camping* as authority to find an exception for duties that are *not* specifically imposed, but are merely implied by § 1983.

Indeed, where the other Court-created exceptions plainly promote the arbitration of labor disputes, and advance the collective bargaining process in general, the Ninth Circuit's new exception has just the opposite effect: it will undermine the arbitration process by injecting federal courts, before any adverse action is taken against an employee, into innumerable (and often trivial) municipal and county workplace issues. Motions for temporary restraining orders and preliminary injunctions will become the means for adjusting such labor disputes, which formerly would have been settled through grievance procedures and arbitration under collective bargaining agreements.

3. Congress knows how to create exceptions to the Act, but has chosen not to exempt § 1983 actions; the Ninth Circuit's decision leaves the intent and meaning of the Act in a state of confusion.

Congress is aware of its authority to exempt actions from Norris-LaGuardia, and it has exercised that authority. For example, the Civil Rights Acts of 1964 and 1991, 42 U.S.C. § 2000e-1 *et seq.*, prohibit employment discrimination based on an individual's race, color, religion, sex or national origin; however, they expressly exclude application of Norris-LaGuardia. 42 U.S.C. § 2000e-5(h). Similarly, The Americans with Disabilities Act (the "ADA"), which prohibits discrimination based on physical or mental disabilities, has a specific Norris-LaGuardia exclusion. 42 U.S.C. § 12117(a).

Significantly, Congress created the Title VII exemption to Norris-LaGuardia in 1964. Fifteen years later, in

1979, Congress amended § 1983, making *no exception* for the Act. Subsequently, Congress created the ADA's Norris-LaGuardia exclusion in 1990. Implicitly, Congress chose not to create a § 1983 exemption to Norris-LaGuardia when it amended § 1983 in 1979, aware, as it may be, that the all-encompassing nature of § 1983 would vitiate the Act. Without congressional authorization, the Ninth Circuit has manufactured the exemption which Congress declined to make. Such a drastic judicial amendment to the Act deserves this Court's attention.

Virtually any dispute over the terms and conditions of municipal employment can be articulated as a claim of "deprivation of * * * rights, privileges or immunities secured by the constitution."[3] Under the Ninth Circuit's ruling, such claims provide the basis for seeking preliminary injunctive relief in federal court. Yet, the same Ninth Circuit panel, in the same decision, acknowledges that Norris-LaGuardia, which deprives courts of the power to

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[3] See, e.g., the following sampling of § 1983 actions that could provide a basis for preliminary injunctions under the Ninth Circuit's ruling: *Okeson v. Tolley School Dist. No. 25*, 570 F. Supp. 408 (D.C.N.D. 1983) (breach of contract); *Laverpool v. New York City Transit Authority*, 760 F. Supp. 1046 (E.D.N.Y. 1991) (implementation of drug testing); *Carter v. Western Reserve Psychiatric Habilitation Center*, 767 F.2d 270 (6th Cir. 1985) (denial of posttermination hearing); *Castro v. Beecher*, 334 F. Supp. 930 (D.C.Mass. 1971) (dispute over job requirements); *DeLuca v. Sullivan*, 450 F. Supp. 736 (D.C.Mass. 1977) (failure to promote); *McAdoo v. Lane*, 564 F. Supp. 1215 (D.C.Ill. 1983) (harassment, humiliation and frustration of employee's performance); *Green v. City of Montgomery*, 792 F. Supp. 1238 (M.D.Ala. 1992) (unwarranted discipline, disadvantageous transfer, denial of training and promotion).

issue preliminary injunctions in such disputes, *does apply* to labor disputes involving county and municipal employers. The Ninth Circuit's inconsistency leaves the intent and meaning of the Act in a state of confusion.

4. Whether federal courts may issue preliminary injunctions in public sector labor disputes is an important question of federal jurisdiction.

No other federal Circuit Court has ruled on the relationship between Norris-LaGuardia and § 1983 in public sector labor disputes. Indeed, the Ninth Circuit cited only two district court cases in support of its determination that § 1983 overrides the Act, one of which had been reversed, and both of which are of little persuasive value.

Lake Michigan Col. Fed. of Teachers v. Lake Michigan Comm. Col., 390 F. Supp. 103, 135 (W.D. Mich. 1974), *reversed*, 508 F.2d 1091 (5th Cir. 1975), was cited for the proposition that Congress intended to apply the Fourteenth Amendment to the States in every situation, including public employment disputes in which injunctive relief is appropriate. In fact, the district court in *Lake Michigan*, as well as in *Anderson v. Edwards*, 505 F. Supp. 1043 (S.D. Ala. 1981), the other case upon which the Ninth Circuit relied, found preliminary injunctive relief appropriate on the basis that the *federal government's* exclusion from the Act, established by this Court in *United States v. United Mine Workers*, 330 U.S. 258 (1947), extended to counties and municipalities. However, in its Opinion, the Ninth Circuit expressly rejected the *Mine Workers* rationale. The district courts in neither *Lake Michigan* or *Anderson* necessarily decided whether a labor

dispute over a claim of deprivation of a constitutional right constitutes an exception to Norris-LaGuardia.[4]

5. Excluding § 1983 actions profoundly diminishes Norris-LaGuardia, but prohibiting preliminary injunctions in labor disputes does not impair § 1983.

The question presented is an important one of first impression under Norris-LaGuardia. The Ninth Circuit's unprecedented construction of the Act virtually eliminates its application in any public-sector labor dispute. This might be justifiable if it was necessary to eliminate Norris-LaGuardia's prohibition against preliminary injunctions in labor disputes in order to preserve the remedies available under § 1983, but this is not the case. The remedies available under § 1983 are not threatened by Norris-LaGuardia. Where a municipal or county employee has been deprived of constitutional rights in employment, under § 1983 the employee may be awarded

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[4] The procedural history of *Lake Michigan* further undermines its authority. The district court issued a temporary restraining order requiring the immediate reinstatement of the plaintiffs, who had been fired for an illegal strike, and who claimed they were denied due process. The Sixth Circuit stayed the order, and then vacated it, 480 F.2d 927 (6th Cir. 1973), "as an abuse of discretion," 518 F.2d at 1094. After a trial, the district court issued an exhaustive opinion granting injunctive relief in the form of reinstatement. 390 F. Supp. 103.

On appeal, the Sixth Circuit reversed and remanded the entire district court decision. The Sixth Circuit did not reach the issue of whether Norris-LaGuardia prohibited preliminary injunctive relief, because *no* relief was granted.

reinstatement, back pay, accrued benefits, seniority, damages, punitive damages, costs and attorney fees, i.e., made whole. Courts need not resort to temporary restraining orders or preliminary injunctions to fill out an otherwise incomplete § 1983 remedial scheme.

The Ninth Circuit's decision in the instant case *will* "cut deeply into the policy of the Norris-LaGuardia Act and make the courts potential participants in a wide range of arbitrable disputes under the many existing and future collective bargaining contracts," as this Court cautioned *against* in *Buffalo Forge*. But Norris LaGuardia need *not* be sacrificed to preserve threatened remedies under § 1983.

CONCLUSION

For these reasons, this petition for certiorari should be granted. The Ninth Circuit's Opinion should be reviewed and reversed by this Court.

Dated: December 30, 1993.

Respectfully submitted,

STEVEN J. NEMIROW*
Assistant County Counsel

LAURENCE KRESSEL
Multnomah County Counsel

Attorneys for Petitioners

*Counsel of Record

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIM REUTER, Plaintiff-Appellee, v. BOB SKIPPER, Defendant-Appellant.	)	No. 93-35140 D.C. No. CV-92-1622-JAR ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the District of Oregon
James A. Redden, District Judge, Presiding

Submitted July 15, 1993*****
Portland, Oregon

Filed August 27, 1993
Amended October 7, 1993

Before: Alfred T. Goodwin, Jerome Farris and David R. Thompson, Circuit Judges.

Opinion by Judge Thompson

***** The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. 34(a); 9th Cir. R. 34-4.

SUMMARY

Labor and Employment/Individual Rights

The court of appeals affirmed an order of the district court. The court held that the Norris-LaGuardia Act of 1932 did not preclude the issuance of an injunction pursuant to 42 U.S.C. Section 1983 against a municipal corporation involved in a labor dispute.

Appellee Kim Reuter was fired from her position as a corrections officer for Multnomah County, Oregon, for cohabiting with a felon on parole from state prison in violation of a work rule promulgated pursuant to the collective bargaining agreement under which she worked. Reuter sued under Section 1983 for violation of the First and Fourteenth Amendments. The district court issued a preliminary injunction prohibiting the County from discharging her pending resolution of her civil rights action. Contending that Norris-LaGuardia, which applied to persons participating in a labor dispute, prohibited the issuance of a federal injunction in the premises, the County appealed.

[1] The work rule applied to Reuter was directly related to the terms and conditions of her employment and the remedy for its violation was her discharge. The circumstances were thus a labor dispute under Norris-LaGuardia.

[2] Under Oregon law, the County was a body politic and corporate. Nothing in the legislative history of Norris-LaGuardia suggested that the statute was not

intended to apply to the County. [3] Further, holding a municipality to be excluded from Norris-LaGuardia's proscription of injunctions under case law dealing with the sovereignty of state governments was inconsistent with Supreme Court holdings that municipal corporations are persons subject to suit under Section 1983. [4] Moreover, the Congressional definition of person that was effective when both the Civil Rights Act of 1871 and Norris-LaGuardia were enacted included bodies politic and corporate. Omission of bodies politic and corporate from the broader definition of person that Congress enacted in 1948 did not indicate an intention to exclude municipal corporations from Norris-LaGuardia.

[5] Nonetheless, Reuter's action was based on a statute that was excepted from the anti-injunction provisions of Norris-LaGuardia, [6] since Section 1983's central purpose was to provide relief from the deprivation of federally secured rights by government.

COUNSEL

Steven J. Nemirow, Assistant County Counsel, Multnomah County, Portland, Oregon, for defendant-appellant.

Spencer M. Neal, Ginsburg & Neal, Portland, Oregon, for plaintiff-appellee.

ORDER

The opinion filed August 27, 1993 is amended by deleting the last sentence of the third full paragraph at slip op. 9205. The deleted sentence begins: "If, in a labor dispute. . . . "

OPINION

THOMPSON, Circuit Judge:

The Sheriff of Multnomah County, Bob Skipper (hereinafter "the County"), appeals a preliminary injunction granted by the district court enjoining the County from firing Kim Reuter during the pendency of her action brought under 42 U.S.C. § 1983. Reuter worked for the County as a County Corrections Officer. She was fired because she violated a rule which prohibited cohabitation between a corrections officer and an ex-felon.

The County contends this case involves a labor dispute and the district court was precluded from issuing the preliminary injunction by the Norris-LaGuardia Act of 1932 ("Norris-LaGuardia"), 29 U.S.C. §§ 101-115 (1988). The merits of the injunction are not contested. We have jurisdiction under 29 U.S.C. § 110. We affirm the district court's grant of the preliminary injunction.

I

BACKGROUND

Pursuant to a collective bargaining agreement between the County and the Multnomah County Corrections Officers Association, the officers' union, the County

promulgated work rules for corrections officers. One work rule prohibited certain relationships between corrections officers and ex-felons who had been imprisoned anytime in the preceding ten years. Reuter admits she violated this rule by cohabitating with an ex-felon on parole from state prison.

The County sought to discharge Reuter for violating the rule. It asserted that Reuter's relationship posed a security risk and also reflected unfavorably upon the Sheriff's Department. When Reuter was informed of the County's intention to discharge her, she filed this action under 42 U.S.C. § 1983 and sought a temporary restraining order and preliminary injunction to block her discharge. She contended that the County's work rule violated her right to associate in an intimate relationship under the First Amendment and her right to privacy under the Fourteenth Amendment.

The district court issued a temporary restraining order. After a hearing, the court issued a preliminary injunction preventing the County from firing Reuter pending the outcome of her section 1983 action. The County appeals.

II

DISCUSSION

Norris-LaGuardia prohibits any federal court from issuing an injunction in almost any "labor dispute." *See Camping Constr. Co. v. District Council of Iron Workers*, 915 F.2d 1333, 1343-49 (9th Cir. 1990) (discussing limited scenarios in which Norris-LaGuardia has been held not to

bar injunctive relief) *cert. denied*, 111 S. Ct. 1684 *and cert. denied*, 111 S. Ct. 2260. If Norris-LaGuardia applies here, an injunction is improper under 29 U.S.C. § 104(a) ("No court of the United States shall have jurisdiction to issue any restraining order or . . . injunction . . . to prohibit any person or persons . . . from: . . . (a) Ceasing or refusing to perform any work or to remain in any relation of employment.").

Norris-LaGuardia applies only to "person[s] participating or interested in a labor dispute." 29 U.S.C. § 113(b); *see also id.* at §§ 104, 105 & 113(a). Norris-LaGuardia does not specify whether a "person" includes a county.

The issue we must decide is whether the Norris-LaGuardia Act applies in this case to preclude the preliminary injunction which the district court issued. The Act applies if Reuter's section 1983 action is a "labor dispute," the County is a "person" within the meaning of the Act, and Reuter's action is not accepted from the anti-injunction provisions of the Act.

A. Labor Dispute

Section 110 of the Act provides:

> Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall

> be heard and the temporary injunctive order affirmed, modified or set aside expeditiously.

29 U.S.C. § 110.

A " 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 113(c). The definition of "labor dispute" in Norris-LaGuardia is "extraordinarily broad." *See Camping Constr. Co.*, 915 F.2d at 1342-43. Here, Reuter is threatened with discharge for violating a work rule, which is a "term[] or condition of employment." 29 U.S.C. § 113(c).

Reuter contends her dispute with the County presents a constitutional question rather than an employment question. She argues that because her action is founded upon an alleged constitutional violation under section 1983, her case is not a "labor dispute" within the meaning of Norris-LaGuardia. *See Bowman v. Township of Pennsauken*, 709 F. Supp. 1329, 1336 (D.N.J. 1989) (holding that a section 1983 claim by police officers against the Township was not a labor dispute under Norris-LaGuardia).

[1] We reject this argument. The rule Reuter violated is directly related to the terms and conditions of her employment with the County. The County's remedy for a violation of the rule is discharge. Under Norris-LaGuardia's "broad" definition, this is a labor dispute.

B. The County As a "Person"

Norris-LaGuardia applies only to *"person[s]* participating or interested in a labor dispute." 29 U.S.C. § 113(b) (emphasis added); *see also id.* at §§ 104, 105; & 113(a). Relying on *United States v. United Mine Workers of Am.*, 330 U.S. 258, 289 (1947), Reuter argues that the County is not a "person" under Norris-LaGuardia. We disagree.

Mine Workers is inapposite. There, the Court reasoned that the general term, "person," used in Norris-LaGuardia could not be applied to a sovereign government without express words to that effect. *Id.* at 272. The Court also examined the legislative history of Norris-LaGuardia and determined that Congress intended that the federal government would be exempt from its provisions. *Id.* at 275-76.

[2] The County is not a "sovereign," but rather a "body politic and corporate." *See* Or. Rev. Stat. § 203.010 (1991) ("Each county is a body politic and corporate"); *see also The Eureka*, 80 F.2d 303, 304 (9th Cir. 1935) (describing Multnomah County as "a municipal corporation and body politic"); *Coos County v. Oregon*, 734 P.2d 1348, 1352 (Or. 1987) ("Counties have existed in corporate form with the power to sue and be sued since before statehood."). Nothing in the legislative history of Norris-LaGuardia suggests that the statute was not intended to apply to a county.

We are mindful that some district courts have excluded municipalities and subdivisions of state government from Norris-LaGuardia's proscription against the issuance of injunctions, and have done so by relying on *Mine Workers*. *See Anderson v. Edwards*, 505 F. Supp. 1043,

1047 (S.D. Ala. 1981) (extending *Mine Workers* in order to enjoin the City of Mobile from restricting the public speech of its firefighters); *Lake Michigan College Fed'n of Teachers v. Lake Michigan Community College*, 390 F. Supp. 103, 135 (W.D. Mich. 1974), *rev'd on other grounds*, 518 F.2d 1091 (6th Cir. 1975), *cert. denied*, 427 U.S. 904 (1976) (extending *Mine Workers* in order to reinstate teachers who were fired without a hearing after going on strike).

[3] These decisions are inconsistent with the definition of "person" adopted by the Supreme Court in 42 U.S.C. § 1983 cases. The Court has held that municipal corporations are "persons" subject to suit under section 1983. *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978). In contrast, sovereign states are not considered "persons" under section 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989).

[4] Additionally, the history of the Dictionary Act, 1 U.S.C. § 1 (1988), supports the County's contention that it is a "person" under Norris-LaGuardia. Only months before Congress enacted the Civil Rights Act of 1871, on which Reuter's section 1983 action is predicated, it adopted the Dictionary Act. *See Monnell*, 436 U.S. at 688 (citing Act of Feb. 25, 1871, § 2, 16 Stat. 431). That Act provided that the word "person" would include "bodies politic and corporate," meaning municipal corporations such as the County. *Id.* The definition in use in 1871 was still in use in 1932, when Congress enacted Norris-LaGuardia. Congress amended the Dictionary Act in 1948 and inserted a broader definition of "person," including "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." 1 U.S.C. § 1. This amendment, although it

omits "bodies politic and corporate" from the definition, does not indicate that Congress intended to exclude municipal corporations from coverage under Norris-LaGuardia. Indeed, the Supreme Court has held that the requirements of federal statutes are to be imposed on the states, as well as their subdivisions, unless the states or their subdivisions are specifically exempted from the Congressional mandate. *See Garcia v. San Antonio Metro. Transit Auth.*, 469 US. 528, 552-53 (1985) (overruling *National League of Cities v. Usery*, 426 U.S. 833 (1976)); *see also California v. Taylor*, 353 U.S. 553, 564-65 (1957) ("When Congress wished to exclude state employees [from federal labor laws], it expressly so provided. Its failure to do likewise in the Railway Labor Act indicates a purpose not to exclude state employees.").

We hold that the County is a "person" under Norris-LaGuardia.

C. Reuter's Section 1983 Action Excepted From Norris-LaGuardia

Despite the broad anti-injunction language of Norris-LaGuardia, a narrow band of labor disputes exists in which it is appropriate for a federal court to issue a restraining order or an injunction. Reuter contends that injunctions issued in actions brought under 42 U.S.C. § 1983 are within this exception. We agree.

The exceptions to the literal strictures of Norris-LaGuardia are few. "Every such case we have discovered accommodates the [Norris-LaGuardia] Act either to a duty imposed by another statute, or to the strong federal policy favoring labor arbitration." *Camping Constr. Co.*,

915 F.2d at 1345 (citations omitted). "Exceptions to Norris-LaGuardia are limited by this principle." *Id.*

[5] Reuter's section 1983 action falls into the limited category of statutes excepted from the anti-injunction provisions of Norris-LaGuardia. Section 1983 imposes a duty on a person acting under color of state law not to deprive another person "of any rights, privileges or immunities secured by the Constitution and laws." 42 U.S.C. § 1983 (1988). Section 1983 provides the injured person with the broadest possible array of remedies: "an action in law, suit in equity, or other proper proceeding for redress." *Id.*

[6] It would be incongruous to read Norris-LaGuardia to preclude equitable relief as a remedy available to the injured party under section 1983 just because the parties are involved in a labor dispute. The central purpose of section 1983 is to provide compensatory relief to those deprived of their federal rights by governmental bodies. *Felder v. Casey*, 487 U.S. 131, 141 (1987).

We hold that Norris-LaGuardia does not deny a plaintiff in a labor dispute, who has a meritorious constitutional claim under section 1983, any of her available remedies. *See Lake Michigan College*, 390 F. Supp. at 135 ("the court can find no evidence that Congress intended to apply the Fourteenth Amendment to the states in every situation except public employment disputes in which injunctive relief is appropriate."); *see also Anderson*, 505 F. Supp. at 1047 (same).

Our holding does not interfere with the purposes of Norris-LaGuardia. Norris-LaGuardia was intended to protect workers from federal court injunctions so as to

allow them to exercise organized economic power. *See* 29 U.S.C. § 102; *Matter of Crowe & Assocs., Inc.*, 713 F.2d 211, 216 (6th Cir. 1983). If a constitutional right is violated in a labor dispute between a municipal government and its employee, the section 1983 claim will invariably be made by the employee. An injunction issued against the municipality in such circumstances does not interfere with the policy aims of Norris-LaGuardia.

The County does not challenge the merits of the preliminary injunction, only the district court's power to issue it. We conclude that when all of the requirements for equitable relief under section 1983 have been met, Norris-LaGuardia does not preclude the district court from issuing an injunction in a section 1983 action, even though the action involves a labor dispute between an employee and a municipality.

AFFIRMED.

APPENDIX B

FILED OCT 27 1993

CATHY A. CATTERSON, CLERK

U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIM REUTER, Plaintiff-Appellee, v. BOB SKIPPER, Defendant-Appellant.	No. 93-35140 D.C. No. CV-92-1622-JAR ORDER

Before: GOODWIN, FARRIS and THOMPSON, Circuit Judges.

The panel, as constituted above, has unanimously voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED, and the suggestion for a rehearing en banc is REJECTED.

APPENDIX C

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CIVIL MINUTES

Case No.: *Civil 92-1622-RE* Date of Proceeding: *February 8, 1993*

Case Title: *Reuter v. Skipper*

Courtroom Deputy: *Ingrid Campbell*

Reporter: *Jerry Harris*

DOCKET ENTRY:

Pursuant to oral argument held on these motions on February 5, 1993: Defendant's Motion to Dissolve Temporary Restraining Order and for Costs and Fees (doc. #6) is denied, and Plaintiff's motion for Preliminary Injunction (doc. #10) is granted. Further, Defendant's Supplemental Brief in Opposition to Preliminary Injunction (doc. #13) is considered as a Motion for Summary Judgment. Plaintiff's Response is due March 5, 1993. Defendant's Reply is due March 19, 1993. Oral argument will be April 5, 1993 at 10:00 am in courtroom no. 62.

PLAINTIFF'S COUNSEL	**DEFENDANT'S COUNSEL**
Spencer Neal	Steven Nemirow

cc: { } All counsel

Document No:___

Civil Minutes

Honorable James A. Redden

APPENDIX D

29 U.S.C. § 101. Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute,

any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

§ 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by

negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.